

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

JEFFREY HOLMES.

Appellant

DOCKET NUMBER WD77662

DATE: APRIL 5, 2016

Appeal From:

Circuit Court of Jackson County, MO
The Honorable David Michael Byrn, Judge

Appellate Judges:

Division Four
Alok Ahuja, P.J., Anthony Rex Gabbert, J., Thomas Fincham, Sp. J.

Attorneys:

Gregory L. Barnes, Jefferson City, MO,

Counsel for Respondent

Attorneys:

Jonathan Sternberg, Kansas City, MO

Counsel for Appellant

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

v.

JEFFREY HOLMES,

Appellant.

WD77662

Jackson County

Before Division Four Judges: Alok Ahuja, P.J., Anthony Rex Gabbert, J., Thomas Fincham, Sp. J.

Jeffrey Holmes appeals his conviction for the crime of acceding to corruption. He first contends that there was insufficient evidence to prove beyond a reasonable doubt that he “solicited” or “knowingly accepted” sex from a prostitute, C.C., in exchange for his official discretion not to arrest her. He further contends that there was an impermissible variance between his indictment and the relevant verdict director in that the indictment used the term “knowingly accepted” but the verdict director used the term “solicited.”

AFFIRMED

Division Four holds:

1) There was sufficient evidence to prove beyond a reasonable doubt that Holmes both “solicited” and “knowingly accepted” sex from a prostitute, C.C., in exchange for his official discretion not to arrest her. The evidence presented at trial demonstrated that Holmes arranged a meeting with C.C. (whom he knew to be a prostitute in advance), he told her she would be arrested unless she gave him what he wanted, then he did not actually arrest her after he had received a benefit from her in the form of sex. Though Holmes argued on appeal that C.C. could have offered him sex for some other reason than because he solicited her, the jury was free to believe C.C.’s version of events, especially given the fact that Holmes did not testify and no other plausible version of the events in question was presented at trial.

2) The trial court did not plainly err in issuing Instruction 5 (the verdict director for acceding to corruption regarding C.C.), which used the term “solicited” rather than “knowingly accepted” regarding the sexual benefit Holmes received from C.C. Although the indictment charged that Holmes committed the crime of acceding to corruption by “knowingly accepting” sexual benefits in exchange for his official discretion not to arrest C.C., and Instruction 5 stated that he “solicited” sexual benefits in exchange for his official discretion, the record does not show that Holmes was prejudiced by this variance where he did not object to it at trial and his own counsel used the same allegedly impermissible terminology in Instruction 6.

Opinion by Anthony Rex Gabbert, Judge

Date:3/29/16

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